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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,791	01/29/2001	Scott Douglas Augustine	AUGA 17000025 C/M # 10380	8498

25548 7590 02/11/2003

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EXAMINER

SCHOPFER, KENNETH G

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/771,791

Applicant(s)

AUGUSTINE, SCOTT DOUGLAS

Examiner

Kenneth G Schopfer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 58-95 is/are pending in the application.
- 4a) Of the above claim(s) 71-74 and 89-92 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 58-70, 75-88 and 93-95 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 71-74 and 89-92 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 58, 59, 61, 63, 69, and 70 are rejected under 35 U.S.C. 102(e) as being anticipated by Augustine et al. (USPN 5620482).
4. Referring to claims 1, 58, 59, 61, 63, 69, and 70, Augustine et al. teach all of the limitations of these claims. Augustine et al. disclose an apparatus for covering the upper or lower extremities of a person including a flexible base sheet 50, a material attached to the base sheet by a plurality of seals to create an inflatable portion between the sheet and the overlaying material, a plurality of apertures 62 through the base sheet, a rectangular surgical drape 70, and a recess 22.

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 60, 62, 64-67, 75-85, 87, 88 and 93-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine et al. (USPN 5620482) in view of Irani (USPN 5405370).

7. Referring to claims 60, 62, 64-67, 75-85, 87, 88, and 93-95, Augustine et al. teach all of the limitations of these claims as described above except for the opening and the inflatable portion being configured to cover the upper and lower extremities. Irani discloses a similar blanket where the inflatable portion is configured to cover the upper and lower extremities of a person and teaches that it is known in the art to provide an opening in the blanket to provide access through the blanket to perform surgical procedures. It would have been obvious to one of ordinary skill in the art at the time of invention to include an opening and coverage of the upper and lower extremities as in Irani in the device of Augustine et al. to warm the entire body and provide for surgical access while using the device.

8. Claim 68 is rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine et al. (USPN 5620482) in view of Collins (USPN 3750664).

9. Referring to claim 68, Augustine et al. teach all of the limitations of this claim as described above except for the frame. Collins discloses a similar device that is supported by a frame to properly position the blanket on top of the patient. It would have been obvious to one

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of ordinary skill in the art at the time of invention to include a frame as in Collins with the device of Augustine et al. to aid in positioning the blanket over a patient.

10. Claim 86 is rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine et al. (USPN 5620482) in view of Irani (USPN 5405370) as applied to claim 75 above, and further in view of Collins (USPN 3750664).

11. Referring to claims 86, the combined device of Augustine et al. and Irani teaches all of the limitations of this claim as described above except for the frame. Collins discloses a similar device that is supported by a frame to properly position the blanket on top of the patient. It would have been obvious to one of ordinary skill in the art at the time of invention to include a frame as in Collins in the device of Augustine et al. and Irani to aid in positioning the blanket over a patient.

#### ***Response to Arguments***

12. Applicant's arguments filed with paper number 10 have been fully considered but they are not persuasive.

13. The applicant argues that the foot drape of Augustine et al. (USPN 5620482) is not referred to as a surgical drape and should not be considered one. However, the drape of the present invention and the drape of Augustine et al. are formed of the same materials, i.e. heat-sealable plastic, and can perform the same functions. Both drapes help retain heat and both can be used as a sterile covering to prevent the transportation of microorganisms. Thus, the foot drape of Augustine et al. can clearly be classified as a surgical drape.

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14. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Irani teaches a blanket that serves as a surgical drape and has a surgical access opening. In combining the device of Augustine et al. and Irani it is not suggested that a surgical drape be added to the device of Irani. Irani is used as a teaching that it is known in the art to provide openings in surgical drapes and blankets in order to provide surgical access.

#### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth G Schopfer whose telephone number is 703-305-2649. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 703-308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

KS

January 29, 2003

  
ROY D. GIBSON  
PRIMARY EXAMINER